

DEPARTMENT OF CORPORATIONS
California's Investment and Financing Authority

DEMETRIOS A. BOUTRIS
California Corporations Commissioner
Sacramento, California
January 3, 2003

IN REPLY REFER TO:
FILE NO: Alpha

Re: A Study of Consumer Credit Counseling Agencies in California

To Consumer Organizations:

The California Department of Corporations ("Department") seeks your assistance with a study of the consumer credit counseling industry in California regarding the establishment of fees for debt management plans and debt settlement plans. The Department is currently conducting a survey of consumer credit counseling organizations, debtors and consumer organizations for the purpose of this study, and requests your participation.

Attached is a survey for debtors using the services of a consumer credit counseling organization. Please answer **questions 1 and 4 through 7** and return the survey to the Department by **January 31, 2003**. To the extent you have access to debtors utilizing the services of a consumer credit counseling organization, please make copies of this survey available to them.

By way of background, the California Legislature has directed the Department to conduct this study in AB 2293 (Liu, Chap. 779, Stats. 2002). AB 2293 substantially amends the requirements for the exemption from prorater licensing under the Check Sellers, Bill Payers and Proraters Law (the "CSBPPL," California Financial Code Section 12000, et seq.) for specified nonprofit consumer credit counseling organizations, and additionally requires the Department to conduct a study of industry fees.

Section 11 of AB 2293 provides as follows:

The Department of Corporations shall conduct a study of the consumer credit counseling industry in California and make recommendations to the Legislature on or before March 1, 2003, regarding the establishment of fees for debt management plans and debt settlement plans. This study shall be conducted in consultation with the consumer credit counseling industry and consumer organizations.

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SACRAMENTO 95814-4052
1515 K STREET, SUITE 200
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SAN FRANCISCO 94102-5303
1390 MARKET STREET
(415) 557-3787

LOS ANGELES 90013-2344
320 WEST 4TH STREET
(213) 576-7500

SAN DIEGO 92101-3697
1350 FRONT STREET
(619) 525-4233

Pursuant to this directive, the Department is seeking information from consumer credit counseling organizations, debtors and consumer groups to assist the Department in making recommendations to the Legislature regarding the establishment of fees.

The CSBPPL requires a prorater to obtain a license from the Department. Under the CSBPPL, a prorater is defined as follows:

A prorater is a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor. (California Financial Code Section 12002.1)

Prior to AB 2293, Section 12100(j) of the CSBPPL set forth an exemption from the licensing requirement for "nonprofit community service organizations," commonly known as consumer credit counseling organizations, provided that they meet the requirements of the exemption. One such requirement for claiming the exemption prior to the effective date of AB 2293 was that any fee for arranging or administering a debt settlement plan be a charge for administrative services only, and that such charge be limited to 6.5 percent of the money disbursed monthly, or twenty dollars (\$20) per month, whichever is less, to offset expenses.

After the effective date of AB 2293 (January 1, 2003), for a consumer credit counseling organization to rely upon the licensing exemption the organization must comply with the following limitations regarding the amounts that may be received from a debtor for services:

The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c):¹ a one-time sum not to exceed fifty dollars (\$50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 6.5 percent of the money disbursed monthly, or twenty dollars (\$20) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to subdivision (d) of Section 12104 [this subdivision] shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management

¹ Subdivision (c) provides as follows: (c) The nonprofit community service organization has as its principal functions the following: (1) Consumer credit education. (2) Counseling on consumer credit problems and family budgets. (3) Arranging or administering debt management plans. "Debt management plan" means a method of paying debtor's obligations in installments on a monthly basis. (4) Arranging or administering debt settlement plans. "Debt settlement plans" means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

plan or a debt settlement plan. (California Financial Code Section 12104(d), effective January 1, 2003)

Whereas prior to AB 2293, a "debt settlement plan" included what is commonly now referred to as a debt management plan, AB 2293 added definitions for a "debt settlement plan" and a "debt management plan" to clarify the distinctions between the activities, for purposes of the CSBPPL licensing exemption.

The Department has sent a survey to numerous consumer credit counseling organizations that may be doing business in California as a prorater, to obtain industry input on debt management and debt settlement fees. That survey may be found on the Department's Web site, at www.corp.ca.gov. The Department has further sent a "Survey of Debtors" to numerous consumer credit counseling organizations, and requested these organizations make these surveys available to debtors.

The Department is further seeking the input of consumer organizations for this study. Please complete **questions 1 and 4 through 7** of the attached "**Survey of Debtors**" and return the survey to the Department by January 31, 2003. Additionally, please provide this survey to all known debtors utilizing the services of a consumer credit counseling organization. You may also find this survey on the Department's Web site at www.corp.ca.gov.

Also, please provide any information you have, including studies, reports, or news articles, related to fees in the consumer credit counseling industry. Finally, please provide any additional information that you believe will assist the Department in making recommendations to the Legislature regarding the establishment of fees for debt management and debt settlement plans.

Please provide this information by **January 31, 2003**. Thank you for your assistance.

Very truly yours,

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
COLLEEN E. MONAHAN
Corporations Counsel
Office of Law and Legislation
(916) 322-3553

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Survey of Debtors

The California Department of Corporations is conducting a survey of debtors who use the services of consumer credit counseling organizations. The Department must make recommendations to the California Legislature regarding the establishment of fees for debt management and debt settlement plans. (Debt management plans are plans where debtors' funds are distributed to creditors monthly, whereas debt settlement plans involve negotiating and settling all of a debtor's debts in a lump-sum payment.)

Please complete this survey and return it by **January 31, 2003** to the following:

Department of Corporations, State of California
Attn: Kathy Womack, Associate Program Analyst
Office of Law and Legislation
1515 K Street, Suite 200
Sacramento, CA 95814

1. Your Information

Name _____ Address _____
Phone _____ E-mail _____

2. What services are you receiving from a consumer credit counseling organization?

- ☐ I am enrolled in a **Debt Management Plan**
☐ My debts are being settled through a lump-sum **Debt Settlement Plan**
☐ I am receiving or have received **Education or Counseling** related to debt management or settlement
☐ Other (describe) _____

3. What amount(s) have you paid for the services you are receiving? (check all that apply)

- ☐ An enrollment fee of \$ _____ ☐ A monthly fee of \$ _____
☐ A counseling fee of \$ _____ ☐ A voluntary contribution of \$ _____
☐ Other (please describe) _____

4. California limits the fee that may be charged monthly for the service of paying a debtor's bills to \$20. This cap has not increased in 20 years. What is a reasonable fee limit, and why? _____

5. California limits the fee that may be charged for a debt settlement plan to 15% of the amount of the debt forgiven. Is this limit reasonable?

☐ Yes ☐ No ☐ Too Low ☐ Too High I Recommend _____

6. California limits the amount that may be charged for education or counseling in connection with debt management or debt settlement services to a one-time sum of \$50. Is this amount reasonable?

☐ Yes ☐ No ☐ Too Low ☐ Too High I Recommend _____

7. Do you believe that caps on fees are necessary or beneficial? Why or why not? _____

8. What is your unsecured debt (i.e., excluding home and car loans)? \$ _____

Thank you for your participation in this survey. If you have questions regarding this survey, please contact the Office of Law and Legislation at (916) 322-3553.